
(2008) 05 SHI CK 0026
In the High Court Of Himachal Pradesh

H.P. Wakf Board

APPELLANT

Vs

Shri Maulana Mumtaz Ahmad Quasmi

RESPONDENT

Date of Decision : 12-05-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151
Waqf Act, 1995 — Section 85

Citation : AIR 2008 HP 94 : (2008) 2 ShimLC 207

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—The appellant is aggrieved by the orders dated 15.1.2008 passed by the Tribunal, H.P. Wakf Board, (District Judge), Shimla, in Civil Misc. Petition No. 13-S/6 of 2008 titled as H.P. Wakf Board through its Rent Controller v. Shri Maulana Mumtaz Ahmad Quasmi, whereby the appellant's petition was returned back to be presented before the competent Court having jurisdiction.

2. Board appointed the respondent as Honorary Imam of Maszid, Boileauganj, Shimla, H.P. In December, 2006, the National Electronic Media showed the respondent taking bribe for sending the people on Haj Yatra. The illegal and unwarranted activities of the respondent were noticed by the appellant and vide Board Resolution dated 14.2.2007, the respondent's services were discontinued and all facilities withdrawn with immediate effect. Inspite of the letter dated 12.3.2007, the respondent not only failed in handing over possession of the premises allotted to him in his capacity as Honorary Imam but in fact started using the same as Guest House and Madarsa.

3. Consequently, the appellant filed the petition before the Tribunal set up under the Wakfs Act, 1995 (hereinafter referred to as "the Act") claiming the following relief:

(a) directing the defendant to hand over the possession of Imam's residence (huzra);

(b) restraining defendant from running Madarsa (School) in Majid Boileauganj and in the guest house attached therewith;

(c) directing the defendant to hand over the charge and possession along with keys and other articles of management for running the said Guest House alongwith articles, details whereof is given in letter No. EO/HPWB/SML/Charge/2006/352 dated 3.3.2006;

(d) directing the defendant not to run Madarsa (School) in Maszid Boileauganj, Tehsil and District Shimla (HP) and in the guest house attached therewith;

(e) defendant be directed to pay use and occupation charges for illegally occupying the above said Imam's accommodation and Guest House @ Rs. 600/- per day (Rs. 400/- per day for Guest House and Rs. 200/- per day for huzra) from the date of his removal from services i.e. 14.2.2007 till he actually hand over the vacant possession of the same alongwith interest @ 9% per annum till the actual realization of the same.

4. The respondent filed an application under Order 7 Rule 11 read with Section 151 CPC stating that the dispute in question could not be said to be a dispute arising under the Act, therefore the Tribunal did not have any jurisdiction to decide the petition. The Tribunal allowed the application and returned the petition to be filed before the Court of competent jurisdiction. The reasoning given by the Tribunal is reproduced in its entirety:

A plain reading of the plaint shows that the defendant/applicant is now no more Imam of the Boileauganj Maszid because of termination of his such Honorary appointment. Therefore, recovery of possession and use and occupation charges etc. is no more a dispute relating to Wakf or Wakf Board and it is purely a claim against a third person having nothing to do with the Wakf. In such a situation, in my considered opinion, only suit before the Civil Court would lie to claim the aforesaid reliefs which inference can be gathered from the case of "Badagara Jumavath Palli Dharas Committee v. Peedikavalakath Ummerkutty Haji and Ors. AIR 2002 Ker 56. Therefore, instead of rejecting the plaint, it is a case where the plaint should be ordered to be returned to the plaintiff Board to present it before the competent Court. Therefore, the prayer of the defendant is allowed, but in a different mode, that is, the plaint is ordered to be returned to the plaintiff Board to present it before the competent Civil Court.

5. The question for consideration before the Court is as to whether the dispute in issue can be said to be a dispute arising under the Act, determinable by the Tribunal.

6. The Wakf Act, 1995 (hereinafter referred to as "the Act") was enacted to provide for the better administration of Wakfs and for matters connected therewith or incidental thereto. As per the statement of objects and reasons, the Act inter alia was brought in to put certain restrictions on the powers of Mutawallis in the interest of better management of Wakf properties.

Section 3 (r) defines the Wakf as under:

(r) "Wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes

(i) a Wakf by user but such Wakf shall not cease to be a Wakf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) "grants" including mashrut-ul-khidmat for any purpose recognized by the Muslim law as pious, religious or charitable; and

(iii) a Wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious or charitable, and "Wakf" means any person making such dedication.

7. Chapter IV of the Act deals with the establishment of Boards and their functions. Section 32 lays down the powers and functions of the Board. The superintendence of all Wakfs vests in the Board. The Board is duty bound to exercise its powers under the Act to ensure that the Wakfs are properly maintained, controlled and administered. The Board is duty bound to ensure that the property of the Wakfs is applied to the objects and the purposes for which the Wakfs were intended or created and also to take measures for the recovery of loss properties of any Wakf; sanction any transfer of immovable property of a Wakf by way of lease in accordance with the provisions of the Act. Section 32(3) provides for a legal remedy before the Tribunal against any order passed by the Board with regard to the settlement of Scheme.

8. u/s 33 inspection of Wakf properties can be done and also action can be taken against the erring officials. Sub-section (4) of this Section itself provides for a remedy to the aggrieved persons by way of an appeal to the Tribunal.

9. Chapter VI deals with the maintenance of accounts of Wakfs. Section 52 empowers the Board to recover the transferred properties of the Wakf and provides for a legal remedy by way of an appeal to the Tribunal. Section 54 specifically empowers the Chief Executive Officer appointed, under the Act, to remove encroachment on Wakf property and deliver possession. u/s 64(7) the Board has power to direct the Mutawalli who has been removed from the office to hand over the possession of the Wakf property.

10. Chapter VIII, Section 83, empowers the State to constitute Tribunal for the "determination of any dispute, question or other matter relating to the Wakf or Wakf property under the Act". The Tribunal has all the powers of the Civil Court. In fact Section 85 specifically bars the jurisdiction of a Civil Court. For convenience, the relevant provisions of the said Chapter are reproduced as under:

83. Constitution of Tribunals, etc.--(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to the

Wakf or Wakf property under this Act and define the local limits and jurisdiction under the Act of each of such Tribunals....

85. Bar of jurisdiction of Civil Courts.--No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Wakf, Wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

From the Scheme of the Act, it is evident that the Act provides for a complete mechanism for the better administration and supervision and determination of dispute of Wakf and Wakf properties.

11. In Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others, the Apex Court has held as under:

While it is true that under the guise of judicial interpretation the Court cannot supply casus omissus, it is equally true that the Courts in construing an Act of Parliament must always try to give effect to the intention of the legislature. In Crawford v. Spooner 1846 (6) MPC 1:13 ER 562 the Judicial Committee said:

We cannot aid the legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there.

To do so would be to usurp the function of the legislation. At the same time, it is well settled that in construing the provisions of statute the Courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective. Thus, an attempt must always be made to reconcile the relevant provisions so as to advance the remedy intended by the statute.

12. The petition is to prevent the misuse and also recovery of the Wakf property. Admittedly property in question is a Wakf property and, therefore, the administration of the same has to be a dispute under the Act. The Board is enjoined with a duty to protect and preserve the Wakf property and also take action against the erring officials. The Tribunal having all powers of Civil Court can determine all rival contentions. Any interpretation to the contrary would render the provisions of the Act, empowering the Board to protect and preserve the property to be superfluous and redundant. The Act specifically oust the jurisdiction of the Civil Court in respect of any dispute, question or other matters relating to Wakf or Wakf property. Thus, no other interpretation can be given to the expression "any dispute" under "the Act". The dispute for protection and preservation of the property is certainly a dispute falling under the Act.

13. In my view, the order passed by the Tribunal is unsustainable in law. The recovery of possession and use and occupation charges is definitely a dispute relating to the Wakf under the Act. Simply because an Imam inducted into the Wakf property, ceases to be one, it cannot be said that it is a dispute pertaining to the said property would be a dispute against a third person having nothing to do with the Subhan Shah through Lrs. Ramjan Khan and Others Vs. Madhya Pradesh Wakf Board and Others,

14. Reliance of the Tribunal in a decision rendered by the Kerala High Court in Badagara Jumayath Palli Dharas Committee v. Peedikayalakath Ummerkutty Haji and Ors. AIR 2002 Ker 56 to my mind is misconceived. During the pendency of the appeal before the High Court, the Act was enacted, incorporating Sections 7 and 85 ousting the jurisdiction of the Court and conferring jurisdiction on the Tribunal to decide the question relating to the Wakf. The Court was dealing with the question as to whether after the advent of Section 85 of the Act an appeal arising out of the judgment passed by the Court below in relation to Wakf could be heard and decided by the High Court. The judgment does not settle the question in issue. The reliance by the Tribunal on the same is thus misconceived.

15. For the aforesaid reasons, the appeal is allowed. The order dated 15.1.2008 is set aside. The petition filed by the appellant is restored to its original number. The parties through their Counsel are directed to appear before the Tribunal on 9.6.2008. The record be sent back immediately.

16. Keeping in view the fact that public property needs to be protected, it is expected of the Tribunal to decide the matter as expeditiously as possible and on priority basis.

CMP No. 177/2008

17. In view of the disposal of the main matter, this application also stands disposed of.